

REFERENCE TITLE: refund anticipation loans; facilitator registration

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2428

Introduced by
Representative Gallardo

AN ACT

AMENDING SECTION 6-138, ARIZONA REVISED STATUTES; AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO REFUND ANTICIPATION LOANS AND CHECKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-138, Arizona Revised Statutes, is amended to
3 read:

4 6-138. Hearings

5 The superintendent or an administrative law judge shall conduct
6 hearings, including hearings relating to orders of the superintendent
7 granting, denying, revoking or suspending a permit, certificate ~~or~~, license
8 OR REGISTRATION provided for under this title, in accordance with title 41,
9 chapter 6, article 10.

10 Sec. 2. Title 6, Arizona Revised Statutes, is amended by adding
11 chapter 16, to read:

12 CHAPTER 16

13 REFUND ANTICIPATION LOANS AND CHECKS

14 ARTICLE 1. GENERAL PROVISIONS

15 6-1601. Definitions

16 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

17 1. "APPLICANT" MEANS A PERSON WHO APPLIES FOR REGISTRATION AS A
18 FACILITATOR OF REFUND ANTICIPATION LOANS.

19 2. "CREDITOR" MEANS A PERSON WHO MAKES A REFUND ANTICIPATION LOAN OR
20 WHO TAKES AN ASSIGNMENT OF A REFUND ANTICIPATION LOAN.

21 3. "FACILITATOR" MEANS A PERSON, INCLUDING AN OFFICER, AGENT, EMPLOYEE
22 OR REPRESENTATIVE, WHO INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH
23 ANOTHER PERSON SOLICITS THE EXECUTION OF, PROCESSES, RECEIVES OR ACCEPTS AN
24 APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND
25 ANTICIPATION CHECK OR IN ANY OTHER MANNER FACILITATES THE MAKING OF A REFUND
26 ANTICIPATION LOAN OR A REFUND ANTICIPATION CHECK.

27 4. "REFUND ANTICIPATION CHECK" MEANS A CHECK OR OTHER PAYMENT
28 MECHANISM:

29 (a) THAT REPRESENTS THE PROCEEDS OF THE CONSUMER'S TAX REFUND.

30 (b) THAT IS ISSUED BY A DEPOSITORY INSTITUTION OR OTHER PERSON THAT
31 RECEIVES A DIRECT DEPOSIT OF THE CONSUMER'S TAX REFUND OR TAX CREDITS.

32 (c) FOR WHICH THE CONSUMER PAYS A FEE OR OTHER CONSIDERATION FOR THE
33 PAYMENT MECHANISM.

34 5. "REFUND ANTICIPATION LOAN" MEANS A LOAN THAT IS SECURED BY OR THAT
35 THE CREDITOR ARRANGES TO BE REPAYED DIRECTLY OR INDIRECTLY FROM THE PROCEEDS
36 OF THE CONSUMER'S INCOME TAX REFUND OR TAX CREDITS. A REFUND ANTICIPATION
37 LOAN INCLUDES ANY SALE, ASSIGNMENT OR PURCHASE OF A CONSUMER'S TAX REFUND AT
38 A DISCOUNT, WHETHER OR NOT THE CONSUMER IS REQUIRED TO REPAY THE BUYER OR
39 ASSIGNEE, IF THE INTERNAL REVENUE SERVICE DENIES OR REDUCES THE CONSUMER'S
40 TAX REFUND.

41 6. "REFUND ANTICIPATION LOAN FEE" MEANS THE CHARGES, FEES OR OTHER
42 CONSIDERATION CHARGED OR IMPOSED BY THE CREDITOR OR FACILITATOR FOR THE
43 MAKING OF A REFUND ANTICIPATION LOAN AND DOES NOT INCLUDE ANY CHARGE, FEE OR
44 OTHER CONSIDERATION USUALLY CHARGED OR IMPOSED BY THE FACILITATOR IN THE
45 ORDINARY COURSE OF BUSINESS, SUCH AS FEES FOR TAX RETURN PREPARATION AND

1 ELECTRONIC FILING OF TAX RETURNS, IF THE SAME FEES IN THE SAME AMOUNT ARE
2 CHARGED TO THE FACILITATOR'S CUSTOMERS WHO DO NOT RECEIVE REFUND ANTICIPATION
3 LOANS OR REFUND ANTICIPATION CHECKS. A REFUND ANTICIPATION LOAN FEE DOES NOT
4 INCLUDE ANY CHARGE, FEE OR OTHER CONSIDERATION FOR A DEPOSIT ACCOUNT IF THE
5 DEPOSIT ACCOUNT IS USED FOR RECEIPT OF THE CONSUMER'S TAX REFUND TO REPAY THE
6 AMOUNT OWED ON THE LOAN.

7 7. "REFUND ANTICIPATION LOAN INTEREST RATE" MEANS THE INTEREST RATE
8 FOR A REFUND ANTICIPATION LOAN CALCULATED ON AN ANNUALIZED BASIS AND INCLUDES
9 ALL REFUND ANTICIPATION LOAN FEES, INCLUDING ANY ADMINISTRATIVE, DOCUMENT
10 PREPARATION OR OTHER FEES THAT ARE NOT CHARGED TO CONSUMERS WHO DO NOT
11 RECEIVE A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

12 8. "REGISTRANT" MEANS A PERSON WHO IS REGISTERED AS A FACILITATOR OF
13 REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS PURSUANT TO THIS
14 CHAPTER.

15 6-1602. Rules; enforcement

16 THE DEPARTMENT MAY ADOPT RULES AS NECESSARY TO ADMINISTER AND ENFORCE
17 THIS CHAPTER.

18 6-1603. Annual reports

19 ON OR BEFORE JULY 1 OF EACH YEAR, EACH REGISTRANT SHALL FILE AN ANNUAL
20 REPORT WITH THE SUPERINTENDENT PURSUANT TO PROCEDURES THE SUPERINTENDENT
21 ESTABLISHES. AN ANNUAL CONSOLIDATED REPORT SHALL BE PREPARED BY THE
22 SUPERINTENDENT AND MADE AVAILABLE TO THE PUBLIC. THE REPORT SHALL INCLUDE
23 THE FOLLOWING INFORMATION FOR THE TIME PERIOD OF APRIL 15 OF THE PRIOR YEAR
24 TO APRIL 15 OF THE YEAR OF THE REPORT:

25 1. THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
26 FACILITATED BY THE REGISTRANT.

27 2. THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION CHECKS
28 FACILITATED BY THE REGISTRANT.

29 3. THE MINIMUM, MAXIMUM AND AVERAGE AMOUNTS OF REFUND ANTICIPATION
30 LOAN TRANSACTIONS FACILITATED BY THE REGISTRANT.

31 4. THE MINIMUM, MAXIMUM AND AVERAGE AMOUNTS OF REFUND ANTICIPATION
32 CHECK TRANSACTIONS FACILITATED BY THE REGISTRANT.

33 5. THE AVERAGE REFUND ANTICIPATION LOAN INTEREST RATE OF LOAN
34 TRANSACTIONS FACILITATED BY THE REGISTRANT.

35 6. THE AVERAGE NUMBER OF DAYS REFUND ANTICIPATION LOANS FACILITATED BY
36 THE REGISTRANT WERE OUTSTANDING BEFORE BEING REPAYED.

37 7. THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
38 CHARGED OFF AS BAD DEBT.

39 8. THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
40 PREVIOUSLY CHARGED OFF AS BAD DEBT THAT WERE RECOVERED DIRECTLY OR INDIRECTLY
41 BY THE REGISTRANT.

42 6-1604. Severability

43 IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR
44 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS
45 OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID

1 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS CHAPTER ARE
2 SEVERABLE.

3 ARTICLE 2. REGISTRATION

4 6-1621. Registration and bond requirements; exemption

5 A. NO PERSON MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH
6 ANOTHER PERSON SOLICIT THE EXECUTION OF, PROCESS, RECEIVE OR ACCEPT AN
7 APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND
8 ANTICIPATION CHECK WITHOUT FIRST BEING REGISTERED WITH THE SUPERINTENDENT AND
9 POSTING A BOND PURSUANT TO THIS ARTICLE.

10 B. EACH REGISTRANT SHALL POST A BOND IN THE AMOUNT OF ONE HUNDRED
11 THOUSAND DOLLARS PER LOCATION THAT SHALL CONTINUE IN EFFECT FOR FIVE YEARS
12 AFTER THE REGISTRANT CEASES OPERATIONS IN THE STATE. THE BOND SHALL BE
13 AVAILABLE TO PAY DAMAGES AND PENALTIES TO CONSUMERS HARMED BY A VIOLATION OF
14 THIS CHAPTER.

15 C. THIS SECTION DOES NOT APPLY TO A PERSON DOING BUSINESS AS A BANK,
16 THRIFT, SAVINGS ASSOCIATION OR CREDIT UNION UNDER THE LAWS OF THE UNITED
17 STATES OR THIS STATE.

18 6-1622. Registration; renewal; fees; hearing

19 A. AN APPLICATION TO BECOME REGISTERED AS A FACILITATOR SHALL BE IN
20 WRITING, UNDER OATH AND IN A FORM PRESCRIBED BY THE SUPERINTENDENT. THE
21 APPLICATION SHALL CONTAIN ALL INFORMATION PRESCRIBED BY THE SUPERINTENDENT.
22 EACH APPLICATION FOR REGISTRATION SHALL BE ACCOMPANIED BY A FEE, PAYABLE TO
23 THE SUPERINTENDENT, OF TWO HUNDRED FIFTY DOLLARS FOR EACH OFFICE WHERE THE
24 REGISTRANT INTENDS TO FACILITATE REFUND ANTICIPATION LOANS.

25 B. ON THE FILING OF AN APPLICATION FOR REGISTRATION, IF THE
26 SUPERINTENDENT FINDS THAT THE RESPONSIBILITY AND GENERAL FITNESS OF THE
27 APPLICANT COMMAND THE CONFIDENCE OF THE COMMUNITY AND WARRANT BELIEF THAT THE
28 BUSINESS OF FACILITATING REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION
29 CHECKS WILL BE OPERATED WITHIN THE PURPOSES OF THIS CHAPTER, THE
30 SUPERINTENDENT SHALL REGISTER THE APPLICANT AS A FACILITATOR AND SHALL ISSUE
31 AND TRANSMIT TO THE APPLICANT A CERTIFICATE ATTESTING TO THE REGISTRATION.
32 IF THE SUPERINTENDENT DOES NOT MAKE THIS FINDING, THE SUPERINTENDENT SHALL
33 NOT REGISTER THE APPLICANT AND SHALL NOTIFY THE APPLICANT OF THE REASONS FOR
34 THE DENIAL.

35 C. ON RECEIPT OF A CERTIFICATE OF REGISTRATION, THE APPLICANT IS
36 REGISTERED UNDER THIS CHAPTER AND MAY ENGAGE IN THE BUSINESS OF FACILITATING
37 REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS AT THE OFFICES
38 IDENTIFIED ON THE APPLICATION FOR REGISTRATION.

39 D. EACH REGISTRATION AS A FACILITATOR SHALL EXPIRE ON DECEMBER 31
40 FOLLOWING THE DATE THE SUPERINTENDENT ISSUES THE REGISTRATION UNLESS RENEWED.
41 BEFORE THE REGISTRATION EXPIRES, THE REGISTRANT MAY RENEW THE REGISTRATION BY
42 FILING WITH THE SUPERINTENDENT AN APPLICATION FOR RENEWAL IN THE FORM AND
43 CONTAINING ALL INFORMATION PRESCRIBED BY THE SUPERINTENDENT. EACH
44 APPLICATION FOR RENEWAL OF REGISTRATION SHALL BE ACCOMPANIED BY A FEE OF ONE
45 HUNDRED DOLLARS FOR EACH OFFICE WHERE THE REGISTRANT INTENDS TO FACILITATE

1 REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS DURING THE SUCCEEDING
2 YEAR.

3 E. ON THE FILING OF AN APPLICATION FOR RENEWAL OF REGISTRATION UNDER
4 THIS CHAPTER, THE SUPERINTENDENT SHALL RENEW THE REGISTRATION UNLESS THE
5 SUPERINTENDENT DETERMINES THAT THE FITNESS OR THE OPERATIONS OF THE
6 REGISTRANT WOULD NOT SUPPORT REGISTRATION OF THE REGISTRANT UNDER THIS
7 SECTION. IF THE SUPERINTENDENT MAKES THAT DETERMINATION, THE SUPERINTENDENT
8 SHALL NOTIFY THE REGISTRANT STATING THE REASONS FOR THE DETERMINATION.

9 F. EACH REGISTRANT SHALL PROMINENTLY DISPLAY A CERTIFICATE ISSUED
10 UNDER THIS CHAPTER IN EACH PLACE OF BUSINESS IN THIS STATE WHERE THE
11 REGISTRANT FACILITATES THE MAKING OF REFUND ANTICIPATION LOANS OR REFUND
12 ANTICIPATION CHECKS.

13 G. WITHIN FIVE DAYS OF RECEIPT OF THE SUPERINTENDENT'S NOTICE DENYING
14 AN APPLICATION FOR REGISTRATION OR RENEWAL, AS REQUIRED BY SUBSECTIONS B AND
15 E, THE APPLICANT MAY MAKE WRITTEN DEMAND OF THE SUPERINTENDENT FOR A HEARING
16 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

17 ARTICLE 3. FEES

18 6-1641. Filing fee schedule; notice of excessive fee; required
19 postings

20 A. ON OR BEFORE JANUARY 2 OF EACH YEAR, EACH REGISTRANT SHALL FILE
21 WITH THE SUPERINTENDENT A SCHEDULE OF THE FEES FOR REFUND ANTICIPATION LOANS
22 AND REFUND ANTICIPATION CHECK FEES TO BE FACILITATED BY THE REGISTRANT DURING
23 THE SUCCEEDING YEAR. IMMEDIATELY ON LEARNING OF ANY CHANGE IN THE FEES FOR
24 THAT YEAR, THE REGISTRANT SHALL FILE AN AMENDMENT WITH THE SUPERINTENDENT
25 STATING THE CHANGE. FILING IS EFFECTIVE ON RECEIPT BY THE SUPERINTENDENT.

26 B. IF THE SUPERINTENDENT FINDS THAT A REFUND ANTICIPATION LOAN
27 INTEREST RATE EXCEEDS THIRTY-SIX PER CENT OR THE RATE SET FORTH IN THE SMALL
28 LOAN INTEREST RATE, WHICHEVER IS LOWER, THE SUPERINTENDENT SHALL NOTIFY THE
29 REGISTRANT THAT THE RATE EXCEEDS THE AMOUNT SET FORTH IN THIS SUBSECTION AND
30 THAT THE CONSEQUENCES OF CHARGING A REFUND ANTICIPATION LOAN INTEREST RATE IN
31 AN AMOUNT THAT EXCEEDS THIS SECTION INCLUDE LIABILITY TO THE CONSUMER FOR
32 DAMAGES PURSUANT TO SECTION 6-1723 AND POSSIBLE REVOCATION OF REGISTRATION AS
33 A FACILITATOR AFTER NOTICE AND A HEARING PURSUANT TO TITLE 41, CHAPTER 6,
34 ARTICLE 10.

35 C. EVERY REGISTRANT SHALL DISPLAY SCHEDULES SHOWING THE CURRENT FEES
36 FOR REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS FACILITATED AT
37 THE OFFICE AND FOR THE ELECTRONIC FILING OF THE TAXPAYER'S TAX RETURN. THE
38 SCHEDULES SHALL BE DISPLAYED IN EVERY ROOM OR SECTION OF A ROOM IN WHICH
39 CUSTOMERS EITHER WAIT TO RECEIVE TAX SERVICES OR ACTUALLY RECEIVE TAX
40 SERVICES. THE REQUIRED SCHEDULES AND DISCLOSURE SHALL BE POSTED IN EVERY
41 LANGUAGE IN WHICH THE OFFICE ROUTINELY DOES BUSINESS.

42 D. EVERY REGISTRANT SHALL ALSO PROMINENTLY DISPLAY ON EACH FEE
43 SCHEDULE A LEGEND THAT IS CENTERED, THAT IS IN BOLD, CAPITAL, TWO INCH
44 LETTERS AND THAT STATES THE FOLLOWING:

NOTICE CONCERNING REFUND ANTICIPATION LOANS

YOU CAN GET YOUR REFUND IN ABOUT TEN DAYS WITHOUT GETTING A LOAN OR PAYING ADDITIONAL FEES. YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND DIRECTLY DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT GETTING A LOAN OR PAYING ADDITIONAL FEES. IF YOU GET A REFUND ANTICIPATION LOAN YOU ARE TAKING A LOAN AGAINST YOUR TAX REFUND. YOU WILL PAY AT LEAST (AMOUNT OF ADDITIONAL FEES) FOR THIS LOAN. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT OF THE LOAN. IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS.

E. THE POSTINGS REQUIRED BY THIS SECTION SHALL BE MADE IN AT LEAST FORTY POINT TYPE ON A DOCUMENT MEASURING AT LEAST THIRTY INCHES BY TWENTY-FIVE INCHES. THE POSTINGS REQUIRED IN THIS SECTION SHALL BE DISPLAYED IN PROMINENT LOCATIONS AT EACH OFFICE WHERE THE REGISTRANT IS FACILITATING REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS.

F. NO REGISTRANT MAY FACILITATE A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK UNLESS BOTH OF THE FOLLOWING APPLY:

1. THE SCHEDULE REQUIRED BY THIS SECTION IS DISPLAYED.

2. THE FEE ACTUALLY CHARGED FOR THE REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK IS THE SAME AS THE FEE DISPLAYED ON THE SCHEDULE AND THE FEE SCHEDULE FILED WITH THE SUPERINTENDENT PURSUANT TO THIS SECTION.

ARTICLE 4. ADVERTISING

6-1661. Advertising and marketing; disclosures; definition

A. IF A REGISTRANT MARKETS OR ADVERTISES A REFUND ANTICIPATION LOAN, THE REGISTRANT SHALL STATE BOTH OF THE FOLLOWING:

1. THE PRODUCT IS A LOAN AND TAX FILERS MAY RECEIVE REFUNDS IN EIGHT TO TEN DAYS BY FILING ELECTRONICALLY WITHOUT RECEIVING A LOAN OR PAYING THE ADDITIONAL FEES AND INTEREST ASSOCIATED WITH THE LOAN.

2. TAX FILERS WILL PAY ADDITIONAL FEES OR INTEREST OR BOTH FEES AND INTEREST FOR THE LOAN.

B. THE INFORMATION ABOUT ELECTRONIC FILING AND ABOUT ADDITIONAL FEES OR INTEREST OR BOTH FEES AND INTEREST THAT WILL BE CHARGED FOR THE REFUND ANTICIPATION LOANS SHALL BE IN THE SAME SIZE TYPE IN THE CASE OF WRITTEN MATERIALS AND RECEIVE THE SAME AMOUNT OF TIME IN THE CASE OF SALES PRESENTATIONS, RADIO ADVERTISEMENTS AND TELEPHONE SCRIPTS AS THE INFORMATION REGARDING REFUND ANTICIPATION LOANS.

C. IF A REGISTRANT MARKETS OR ADVERTISES A REFUND ANTICIPATION CHECK, THE REGISTRANT SHALL STATE THAT THE TAX FILER MAY RECEIVE REFUNDS IN THE SAME TIME WITHOUT PAYING FOR A REFUND ANTICIPATION CHECK BY HAVING THE TAX REFUND DIRECTLY DEPOSITED IN THE TAX FILER'S OWN BANK ACCOUNT. THE INFORMATION IN THIS SUBSECTION SHALL BE DISCLOSED IN THE SAME SIZE TYPE IN THE CASE OF WRITTEN MATERIALS AND RECEIVE THE SAME AMOUNT OF TIME IN THE CASE OF SALES PRESENTATIONS, RADIO ADVERTISEMENTS AND TELEPHONE SCRIPTS AS THE INFORMATION REGARDING REFUND ANTICIPATION CHECKS.

1 D. FOR THE PURPOSES OF THIS SECTION, "MARKET OR ADVERTISE" MEANS
2 PRODUCE, DISTRIBUTE OR OTHERWISE DISPLAY OR HAVE DISPLAYED WRITTEN MATERIALS
3 DESCRIBING THE REGISTRANT'S PRODUCTS AND SERVICES, RADIO AND OTHER ORAL
4 MARKETING AND ADVERTISING AND TELEPHONE AND IN-PERSON INTERACTIONS WITH
5 CONSUMERS.

6 ARTICLE 5. DISCLOSURES

7 6-1681. Disclosures

8 AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION LOAN, THE
9 REGISTRANT SHALL DISCLOSE TO THE CONSUMER ON A FORM SEPARATE FROM THE
10 APPLICATION IN FOURTEEN POINT TYPE, UNLESS OTHERWISE NOTED:

- 11 1. THE FEE FOR THE LOAN.
- 12 2. THE FEE FOR ELECTRONIC FILING OF A TAX RETURN.
- 13 3. THE TIME WITHIN WHICH THE PROCEEDS OF THE REFUND ANTICIPATION LOAN
14 OR CHECK WILL BE PAID TO THE CONSUMER IF THE LOAN OR CHECK IS APPROVED.
- 15 4. FOR REFUND ANTICIPATION LOANS, A LEGEND THAT IS CENTERED, THAT IS
16 IN BOLD, CAPITAL LETTERS AND EIGHTEEN POINT TYPE AND THAT STATES THE
17 FOLLOWING:

18 NOTICE

19 THIS IS A LOAN. THIS LOAN IS BORROWING MONEY AGAINST YOUR TAX
20 REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU MUST
21 STILL REPAY THE ENTIRE AMOUNT OF THE LOAN. IF YOUR REFUND IS
22 DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS. YOU CAN GET YOUR
23 REFUND IN ABOUT TEN DAYS WITHOUT GETTING THIS LOAN. YOU CAN
24 HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND DIRECTLY DEPOSITED
25 INTO YOUR OWN ACCOUNT WITHOUT OBTAINING A LOAN OR OTHER PAID
26 PRODUCT.

27 5. FOR REFUND ANTICIPATION LOANS, THE REFUND ANTICIPATION LOAN
28 INTEREST RATE. IF A DEPOSIT ACCOUNT IS ESTABLISHED OR MAINTAINED IN WHOLE OR
29 IN PART FOR THE PURPOSE OF RECEIVING THE CONSUMER'S TAX REFUND TO REPAY THE
30 AMOUNT OWED ON A REFUND ANTICIPATION LOAN, BOTH OF THE FOLLOWING APPLY:

31 (a) THE MATURITY OF THE LOAN FOR THE PURPOSE OF DETERMINING THE REFUND
32 ANTICIPATION LOAN INTEREST RATE SHALL BE ASSUMED TO BE THE ESTIMATED DATE
33 WHEN THE TAX REFUND WILL BE DEPOSITED IN THE DEPOSIT ACCOUNT.

34 (b) ANY FEE CHARGED TO THE CONSUMER FOR THE DEPOSIT PRESCRIBED IN
35 SUBDIVISION (a) SHALL BE CONSIDERED A LOAN FEE AND SHALL BE INCLUDED IN THE
36 CALCULATION OF THE REFUND ANTICIPATION LOAN INTEREST RATE.

37 6. FOR REFUND ANTICIPATION CHECKS, A LEGEND THAT IS CENTERED, THAT IS
38 IN BOLD, CAPITAL LETTERS AND EIGHTEEN POINT TYPE AND THAT STATES THE
39 FOLLOWING:

40 NOTICE

41 YOU ARE PAYING (AMOUNT OF REFUND ANTICIPATION CHECK FEE) TO GET
42 YOUR REFUND CHECK THROUGH (NAME OF ISSUER OF REFUND ANTICIPATION
43 CHECK). YOU CAN AVOID THIS FEE BY HAVING THE INTERNAL REVENUE
44 SERVICE DIRECTLY DEPOSIT YOUR REFUND INTO YOUR OWN BANK ACCOUNT.
45 IF YOU DO NOT HAVE A BANK ACCOUNT, YOU MAY WISH TO CONSIDER

1 GETTING ONE. YOU CAN ALSO AVOID THIS FEE BY HAVING YOUR TAX
2 REFUND PAID WITH A CHECK.

3 ARTICLE 6. PROHIBITED ACTIVITIES

4 6-1701. Prohibited activities

5 A FACILITATOR OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
6 CHECK SHALL NOT DO ANY OF THE FOLLOWING:

7 1. ENGAGE IN UNFAIR, DECEPTIVE OR FRAUDULENT PRACTICES IN THE
8 FACILITATING OF A REFUND ANTICIPATION CHECK OR IN THE MAKING OR FACILITATING
9 OF A REFUND ANTICIPATION LOAN, INCLUDING MISREPRESENTING A MATERIAL FACTOR OR
10 CONDITION OF THE LOAN OR CHECK OR MAKING ANY ORAL STATEMENTS CONTRADICTING
11 ANY OF THE INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO SECTIONS 6-1641
12 AND 6-1661.

13 2. ENGAGE IN ANY TRANSACTION, PRACTICE OR COURSE OF BUSINESS THAT
14 OPERATES A FRAUD ON ANY PERSON IN CONNECTION WITH A REFUND ANTICIPATION LOAN
15 OR REFUND ANTICIPATION CHECK.

16 3. THREATEN TO TAKE ANY ACTION THAT IS PROHIBITED BY THIS CHAPTER.

17 4. FAIL TO ARRANGE FOR A REFUND ANTICIPATION LOAN OR REFUND
18 ANTICIPATION CHECK OR TO INFORM THE CONSUMER THAT THE APPLICATION IS REJECTED
19 PROMPTLY AFTER THE CONSUMER APPLIES FOR THE LOAN OR CHECK.

20 5. FACILITATE A REFUND ANTICIPATION LOAN FOR WHICH THE REFUND
21 ANTICIPATION LOAN INTEREST RATE IS EITHER OF THE FOLLOWING:

22 (a) DIFFERENT FROM THE FEE POSTED OR FILED WITH THE SUPERINTENDENT.

23 (b) GREATER THAN THIRTY-SIX PER CENT OR THE RATE SET FORTH IN THE
24 SMALL LOAN INTEREST RATE, WHICHEVER IS LOWER.

25 6. CHARGE MORE THAN FIVE DOLLARS IN ADMINISTRATIVE DOCUMENT
26 PREPARATION OR APPLICATION FEES FOR EACH REFUND ANTICIPATION LOAN ENTERED
27 INTO WITH A CONSUMER. THE LIMIT ON FEES SHALL APPLY TO ANY ELECTRONIC FILING
28 FEE CHARGED BY THE REGISTRANT, UNLESS THE SAME ELECTRONIC FILING FEE IS
29 CHARGED TO THE REGISTRANT'S CUSTOMERS WHO DO NOT RECEIVE REFUND ANTICIPATION
30 LOANS OR REFUND ANTICIPATION CHECKS.

31 7. DIRECTLY OR INDIRECTLY CHARGE OR ARRANGE FOR THE CHARGING OF ANY
32 INTEREST, FEE OR CHARGE RELATED TO A REFUND ANTICIPATION LOAN OR REFUND
33 ANTICIPATION CHECK OTHER THAN THOSE SPECIFICALLY AUTHORIZED BY THIS CHAPTER,
34 INCLUDING:

35 (a) CHARGES FOR INSURANCE.

36 (b) ATTORNEY FEES OR OTHER COLLECTION COSTS.

37 (c) CHECK CASHING.

38 8. FAIL TO GIVE THE CONSUMER A COPY OF THE COMPLETED LOAN APPLICATION
39 AND AGREEMENT IN A FORM THAT MAY BE KEPT BY THE CONSUMER BEFORE CONSUMMATION
40 OF THE LOAN OR CHECK TRANSACTION.

41 9. FAIL TO INCLUDE THE INFORMATION REQUIRED BY SECTION 6-1661 IN
42 ENGLISH AND IN THE LANGUAGE IN WHICH THE LOAN WAS NEGOTIATED.

43 10. INCLUDE ANY OF THE FOLLOWING IN ANY DOCUMENT PROVIDED OR SIGNED IN
44 CONNECTION WITH A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK,
45 INCLUDING THE LOAN DOCUMENT REQUIRED BY SECTION 6-1661:

- 1 (a) A HOLD HARMLESS CLAUSE.
- 2 (b) A CONFESSION OF JUDGMENT CLAUSE.
- 3 (c) A WAIVER OF THE RIGHT TO A JURY TRIAL, IF APPLICABLE, IN ANY
- 4 ACTION BROUGHT BY OR AGAINST A CONSUMER.
- 5 (d) ANY ASSIGNMENT OF OR ORDER FOR PAYMENT OF WAGES OR OTHER
- 6 COMPENSATION FOR SERVICES.
- 7 (e) A PROVISION IN WHICH THE CONSUMER AGREES NOT TO ASSERT ANY CLAIM
- 8 OR DEFENSE ARISING OUT OF THE CONTRACT.
- 9 (f) A WAIVER OF ANY PROVISION OF THIS CHAPTER, INCLUDING THE RIGHT TO
- 10 SEEK ACTUAL DAMAGES, STATUTORY DAMAGES AND ATTORNEY FEES AND COSTS PURSUANT
- 11 TO SECTION 6-1723.
- 12 (g) A WAIVER OF THE RIGHT TO INJUNCTIVE, DECLARATORY OR OTHER
- 13 EQUITABLE RELIEF OR RELIEF ON A CLASS WIDE BASIS.
- 14 (h) A PROVISION REQUIRING THAT ANY ASPECT OF A RESOLUTION OF A DISPUTE
- 15 BETWEEN THE PARTIES TO THE AGREEMENT BE KEPT CONFIDENTIAL. THIS PROVISION
- 16 DOES NOT AFFECT THE RIGHTS OF THE PARTIES TO AGREE THAT CERTAIN SPECIFIED
- 17 INFORMATION IS A TRADE SECRET OR OTHERWISE CONFIDENTIAL OR TO LATER AGREE,
- 18 AFTER THE DISPUTE ARISES, TO KEEP A RESOLUTION CONFIDENTIAL.
- 19 11. TAKE OR ARRANGE FOR A CREDITOR TO TAKE A SECURITY INTEREST IN ANY
- 20 PROPERTY OF THE CONSUMER OTHER THAN THE PROCEEDS OF THE CONSUMER'S TAX REFUND
- 21 TO SECURE PAYMENT OF A REFUND ANTICIPATION LOAN.
- 22 12. DIRECTLY OR INDIRECTLY, INDIVIDUALLY OR IN CONJUNCTION OR
- 23 COOPERATION WITH ANOTHER PERSON, ENGAGE IN THE COLLECTION OF AN OUTSTANDING
- 24 OR DELINQUENT REFUND ANTICIPATION LOAN FOR ANY CREDITOR OR ASSIGNEE,
- 25 INCLUDING SOLICITING THE EXECUTION OF, PROCESSING, RECEIVING OR ACCEPTING AN
- 26 APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND
- 27 ANTICIPATION CHECK THAT CONTAINS A PROVISION PERMITTING THE CREDITOR TO
- 28 REPAY, BY OFFSET OR OTHER MEANS, AN OUTSTANDING OR DELINQUENT REFUND
- 29 ANTICIPATION LOAN FOR THAT CREDITOR OR ANY CREDITOR FROM THE PROCEEDS OF THE
- 30 CONSUMER'S TAX REFUND.
- 31 13. FACILITATE, REFER OR SOLICIT CONSUMERS ON BEHALF OF A THIRD PARTY
- 32 ENGAGED IN CHECK CASHING FOR A FEE OR PERMIT THIRD-PARTY CHECK CASHING FOR A
- 33 FEE IN ANY PLACE OF BUSINESS IDENTIFIED ON THE APPLICATION FOR REGISTRATION.
- 34 14. FACILITATE ANY LOAN THAT IS SECURED BY OR THAT THE CREDITOR
- 35 ARRANGES TO BE REPAYED DIRECTLY FROM THE PROCEEDS OF THE CONSUMER'S STATE TAX
- 36 REFUND FROM THE DEPARTMENT OF REVENUE.
- 37 15. MAKE A MISREPRESENTATION OF A MATERIAL FACT IN OBTAINING OR
- 38 ATTEMPTING TO OBTAIN REGISTRATION AS A FACILITATOR.

ARTICLE 7. REMEDIES

6-1721. Cease and desist orders; hearings; penalty

41 A. IF THE SUPERINTENDENT BELIEVES OR HAS NOTICE THAT ANY ACTION OF A

42 REGISTRANT MAY BE IN VIOLATION OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT

43 TO THIS CHAPTER OR THAT THE REGISTRANT HAS ENGAGED IN AN UNFAIR OR DECEPTIVE

44 ACT, THE SUPERINTENDENT SHALL GIVE REASONABLE NOTICE TO THE REGISTRANT OF THE

45 SUSPECTED VIOLATION OR UNFAIR OR DECEPTIVE ACT AND AN OPPORTUNITY FOR A

1 HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. AFTER THE HEARING IF
2 THE SUPERINTENDENT FINDS THAT AN ACTION OF THE REGISTRANT IS IN VIOLATION OF
3 THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER OR THAT THE REGISTRANT
4 HAS ENGAGED IN AN UNFAIR OR DECEPTIVE ACT, THE SUPERINTENDENT SHALL ORDER THE
5 REGISTRANT TO CEASE AND DESIST FROM THE ACTION.

6 B. IF THE REGISTRANT CONTINUES AN ACTION IN VIOLATION OF THE
7 SUPERINTENDENT'S ORDER TO CEASE AND DESIST FROM THE ACTION, THE REGISTRANT IS
8 SUBJECT TO A PENALTY OF ONE THOUSAND DOLLARS FOR EACH ACTION IN VIOLATION OF
9 THE ORDER.

10 C. AFTER NOTICE AND A HEARING THE SUPERINTENDENT MAY REVOKE THE
11 REGISTRATION OF THE REGISTRANT TEMPORARILY OR PERMANENTLY AT THE DISCRETION
12 OF THE SUPERINTENDENT IF THERE IS A FINDING THAT THE REGISTRANT HAS DONE
13 EITHER OF THE FOLLOWING:

14 1. ENGAGED IN A COURSE OF CONDUCT THAT IS IN VIOLATION OF THIS CHAPTER
15 OR THE RULES ADOPTED UNDER THIS CHAPTER.

16 2. CONTINUED TO ENGAGE IN AN ACTION IN VIOLATION OF A CEASE AND DESIST
17 ORDER OF THE SUPERINTENDENT.

18 D. THE SUPERINTENDENT SHALL MAINTAIN A LIST OF REGISTRANTS THAT SHALL
19 BE AVAILABLE TO INTERESTED PERSONS AND THE PUBLIC. THE SUPERINTENDENT SHALL
20 CREATE A TOLL-FREE TELEPHONE NUMBER FROM WHICH CONSUMERS MAY OBTAIN
21 INFORMATION ABOUT REGISTRANTS AND COMPLAINT FORMS. THE SUPERINTENDENT SHALL
22 ESTABLISH A COMPLAINT PROCESS IN WHICH AN AGGRIEVED CONSUMER OR MEMBER OF THE
23 PUBLIC MAY FILE A COMPLAINT AGAINST A PERSON WHO VIOLATES THIS CHAPTER. ALL
24 COMPLAINTS ARE PUBLIC RECORDS EXCEPT FOR THE COMPLAINANT'S NAME, ADDRESS OR
25 OTHER PERSONAL IDENTIFYING INFORMATION. THE SUPERINTENDENT SHALL HOLD A
26 HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 ON THE REQUEST OF A PARTY
27 TO THE COMPLAINT.

28 6-1722. Remedies; applicability; unlawful practice

29 A. THE REMEDIES OF THIS ARTICLE APPLY TO REGISTRANTS AND TO
30 UNREGISTERED PERSONS TO WHOM THIS CHAPTER APPLIES AND WHO FAIL TO REGISTER.

31 B. ANY VIOLATION BY A REGISTRANT OF SECTION 44-1522 CONSTITUTES A
32 VIOLATION OF THIS CHAPTER.

33 C. ANY VIOLATION OF THIS CHAPTER CONSTITUTES AN UNLAWFUL PRACTICE
34 UNDER SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE
35 APPROPRIATE ACTION AS PRESCRIBED BY TITLE 44, CHAPTER 10, ARTICLE 7.

36 6-1723. Damages; attorney fees; judicial relief

37 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A REGISTRANT
38 WHO ENGAGES IN AN ACTIVITY PROHIBITED UNDER SECTION 6-1701 IN CONNECTION WITH
39 A REFUND ANTICIPATION LOAN OR A REFUND ANTICIPATION CHECK IS LIABLE TO THE
40 CONSUMER FOR ALL OF THE FOLLOWING:

41 1. ACTUAL AND CONSEQUENTIAL DAMAGES.

42 2. TWO THOUSAND DOLLARS OR THREE TIMES THE AMOUNT OF THE REFUND
43 ANTICIPATION LOAN FEE OR OTHER UNAUTHORIZED CHARGE, WHICHEVER IS GREATER.

44 3. REASONABLE ATTORNEY FEES AND COSTS.

1 B. IF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK IS NOT
2 APPROVED, A REGISTRANT WHO FAILS TO DELIVER TO THE CONSUMER THE PROCEEDS OF A
3 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK WITHIN FORTY-EIGHT
4 HOURS AFTER THE TIME PERIOD PROMISED BY THE REGISTRANT WHEN THE CONSUMER
5 APPLIED FOR THE LOAN OR THE CHECK PRODUCT SHALL PAY TO THE CONSUMER AN AMOUNT
6 EQUAL TO THE FEE FOR THE REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
7 CHECK.

8 C. A CONSUMER MAY SUE FOR INJUNCTIVE AND OTHER APPROPRIATE EQUITABLE
9 RELIEF TO STOP ANY PERSON FROM VIOLATING THIS CHAPTER.

10 D. A CONSUMER MAY BRING A CLASS ACTION SUIT TO ENFORCE THIS CHAPTER.

11 E. THE REMEDIES IN THIS SECTION ARE NOT EXCLUSIVE REMEDIES AVAILABLE
12 TO A CONSUMER NOR MUST THE CONSUMER EXHAUST ANY ADMINISTRATIVE REMEDIES
13 PROVIDED UNDER THIS CHAPTER OR ANY OTHER APPLICABLE LAW.

14 Sec. 3. Requirements for enactment; two-thirds vote

15 Pursuant to article IX, section 22, Constitution of Arizona, this act
16 is effective only on the affirmative vote of at least two-thirds of the
17 members of each house of the legislature and is effective immediately on the
18 signature of the governor or, if the governor vetoes this act, on the
19 subsequent affirmative vote of at least three-fourths of the members of each
20 house of the legislature.